Supreme Court, U.S.
FILED

021403 JAN 14 2003

No. 03-___

IN THE

Supreme Court of the United States

Marvin and Lynn St. Germain, *et al.*,
Petitioners,

v.

U.S. Home Corporation

On Petition for a Writ of Certiorari
to the Supreme Court of California

APPENDIX

Barry C. Vaughan
KASDAN, SIMONDS & EPSTEIN LLP
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January 13, 2003

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Court of Appeal, Fourth Appellate District, Division Two - No. E032255

S109766

IN THE SUPREME COURT OF CALIFORNIA

En Banc

MARVIN ST. GERMAIN JR. et al., Petitioners

v.

RIVERSIDE COUNTY SUPERIOR COURT, Respondent; U.S. HOME CORPORATION, Real Party in Interest.

Petition for review DENIED.

SUPREME COURT
FILED
OCT 16 2002
Frederick K. Ohirich Clerk

_____
Deputy

s/GEORGE
Chief Justice

COURT OF APPEAL – STATE OF CALIFORNIA
FOURTH DISTRICT
DIVISION TWO

FILED
AUG 29 2002
COURT OF APPEAL,
FOURTH DISTRICT

MARVIN ST. GERMAIN JR., et al.,

Petitioners

v.

THE SUPERIOR COURT OF THE COUNTY OF RIVERSIDE,

Respondent;

U.S. HOME CORPORATION, et al.,

Real Parties in Interest

E032255

(Super.Ct.No. RIC362559)

The County of Riverside

THE COURT

The petition for writ of mandate/prohibition and request for stay is DENIED.

s/Richli
Acting P.J.

cc: See attached list

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FILED
Superior Court of
California
County of Riverside
JUL 13 2002

Attorneys for Defendants U.S. HOME CORPORATION, a Delaware corporation; LENNAR CORPORATION, a Delaware corporation

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

MARVIN JR. and LYNN ST. GERMAIN, individuals; CHARLES and MONICA STANSELL, individuals; SALVATORE and TULA COCO, individuals; et al.,	) CASE NUMBER 362559) Consolidated with) CASE NUMBER 368844)) ASSIGNED FOR ALL) PURPOSES TO:) JUDGE DALLAS SCOTT
Plaintiffs,	) HOLMES) DEPARTMENT 2
vs.	)
U.S. HOME CORPORATION, Delaware corporation; LENNAR CORPORATION, a Delaware corporation; and DOES -500 inclusive,	) ~~[PROPOSED]~~ ORDER) ON DEFENDANTS') MOTION TO COMPEL) ARBITRATION AND TO) STAY ACTION
Defendants.	)
CONSOLIDATED WITH	) Date: June 25, 2002) Time: 8:30 a.m.

	) Dept: 2
JOHN HINDS, an individual; NICOLE HINDS, an individual; JON HINDS, guardian ad litem for JASMINE HINDS a minor, et al.,	) Action Filed:August 13, 2001) Trial Date: None
Plaintiffs,	
vs.	
U.S. HOME CORPORATION, a Delaware corporation; LENNAR CORPORATION, a Delaware corporation; and DOES 1-500, inclusive,	
Defendants.	

TO PLAINTIFFS AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT the Motion to Compel Arbitration and to Stay Action of Defendants U.S. Home Corporation and Lennar Corporation ("Moving Defendants") came on for hearing on June 25, 2002 at 8:30 a.m. in Department 2 of the above-entitled Court. Howard D. Hall and Matthew S. Buttacavoli appeared on behalf of Moving Defendants; Brian K. Stewart appeared on behalf of Defendants Geosoils and Bruce Keith; and Michael D. Turner and

Steven S. Hanagami appeared on behalf of Plaintiffs. After consideration of all the materials submitted and the oral argument of counsel,

IT IS HEREBY ORDERED THAT Moving Defendants' Motion is GRANTED.

THE COURT FINDS THAT

(1) Based on the Sales Agreements and the New Home Limited Warranty Booklet ("Warranty"), the "Original Purchaser Plaintiffs" agreed to arbitrate all of their disputes against Moving Defendants;

(2) The "Subsequent Purchaser Plaintiffs" are bound by the Warranty's arbitration clause and must arbitrate all of their disputes against Moving Defendants because they are third party beneficiaries of the Warranty and have claimed the benefits of the Warranty and are thus bound by its obligations;

(3) Those Plaintiffs that are "minors" or "tenants" do not have standing to assert claims against Moving Defendants are are nevertheless

bound by the Warranty's arbitration clause and must arbitrate all of their disputes against Moving Defendants because they have claimed the benefits of the Warranty and are thus bound by its obligations;

(4) The Federal Arbitration Act ("FAA") is controlling and inconsistent California statutes are preempted;

(5) *Volt Information Systems, Inc. v. Board of Trustees of Leland Stanford Junior University* (1989) 489 U.S. 468 is not on point because the parties in that case expressly chose to arbitrate their claims under California law notwithstanding the applicability of the FAA. In this case, the FAA is applicable but the subject parties did not agree to arbitrate under California law, rather they expressly agreed to arbitrate pursuant to the FAA;

(6) The arbitration clauses at issue are not unconsciousable; and

(7) The arbitration clauses at issue are

sufficiently broad to include both contract and tort causes of action.

IT IS FURTHER ORDERED THAT this matter is stayed pending completion of arbitration and is set for a ~~nonappearance~~ status ~~report~~ conference on December 19, 2002.

IT IS SO ORDERED.

DATED: Jul 13 2002

s/DALLAS HOLMES, JUDGE
JUDGE OF THE
SUPERIOR COURT

Michael D. Turner, State Bar No. 126455
Steven S. Hanagami, State Bar No. 165093
KASDAN, SIMONDS & EPSTEIN LLP
2600 Michelson Drive, Tenth Floor
Irvine, California 92612-6510
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Attorneys for Plaintiffs

SUPERIOR COURT OF CALIFORNIA

COUNTY OF RIVERSIDE

MARVIN JR. and LYNN ST. GERMAIN, individuals; CHARLES and MONICA STANSELL, individuals; SALVATORE and TULA COCO, individuals; MARIAN and MARIA OLESKY, individuals; WAYNE and DIANNA MARTIN, individuals; SAUNDRA DENDY, an individual; LAWRENCE and DENA BROWN, individuals, ANTHONY and VICKI BONOFIGLIO, individuals; KEITH and PENNY DAVIS, individuals; JOHN and YOLANDA FULLINWIDER, individuals; KEVIN TIERNEY and CAMILLE REINEKE, individuals; ALBERTO and VICTORIA GARCIA, individuals; GARY and CYNDA JERGER, individuals; ASSADOR and VALENTINE FARAJIAN, individuals; SUZY FARAJIAN, an individual; ASSADOR	) Lead Case No. RIC 362559) Action Filed: August 13, 2001) Consolidated with Case No. RIC 368844)) Hearing:) Date: June 25, 2002) Time: 8:30 A.M.) Dept.: 2) Judge: Hon. Dallas S. Holmes)) PLAINTIFFS' OPPOSITION TO U.S. HOME CORPORATION'S MOTION TO COMPEL ARBITRATION AND TO STAY ACTION)

FARAJIAN, as Guardian ad litem for ARPY FARAJIAN, a minor; ROBERT VERGURA, an individual; AMY WORKMAN, an individual; MICHAEL BROWN, an individual; DENA BROWN, as guardian ad litem for DAVID BROWN, a minor; MONICA STANSELL, as guardian ad litem for MONIQUE STANSELL, a minor; MONICA STANSELL, as guardian ad litem for CHANEL STANSELL, a minor; VICTORIA GARCIA, Guardian ad litem for CHRISTIAN GARCIA, a minor; NOURIT VERGURA, an individual; ROBERT VERGURA, as guardian ad litem for NOAH VERGURA, a minor; ROBERT VERGURA, as guardian ad litem for CHANELLE VERGURA, a minor; PATRICIA McLAUGHLIN, an individual; Plaintiffs, vs. U.S. HOME CORPORATION, a Delaware corporation; LENNAR CORPORATION, a Delaware corporation; and DOES 1-500, inclusive, Defendants, JON HINDS, an individual; NICOLE HINDS, an individual;	[Filed concurrently with Plaintiffs' Exhibits in Support of Their Opposition to U.S. Home Corporation's Motion to Compel Arbitration, Declarations of Steven Hanagami, Mark Neely, Larry Brown and Robert Leszkiewicz in Support Thereof, Stipulation to Allow Plaintiffs to File Their Opposition to U.S. Home Corporation's Motion to Compel Arbitration On or Before June 14, 2002, and Plaintiffs' Objection to Evidence Contained in the Declarations of Randy Schroeder and Alison short in support of U.S. Home Corporation's Motion to Compel Arbitration] Trial Date: None

JON HINDS, guardian ad litem for JASMINE HINDS, a minor; JON HINDS, guardian ad litem for SIMONE HINDS, a minor; JON HINDS, guardian ad litem for DOMINIQUE HINDS, a minor; DEBORAH LESZKIEWICZ, an individual; ROBERT LESZKIEWICZ, an individual; DEBORAH LESZKIEWICZ, guardian ad litem for JON PHILLIP COMOUCHE, a minor; DEBORAH LESZKIEWICZ, guardian ad litem for PAOLENA COMOUCHE, a minor;	Set Related Case No. RIC 368844 Filed: December 24, 2001 Trial Date: None Set

Plaintiffs,

vs.

U.S. HOME CORPORATION, a Delaware corporation; LENNAR CORPORATION, a Delaware corporation; and DOES 1-500, inclusive,

Defendants.

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

Plaintiffs hereby submit their Memorandum of Points and Authorities in Opposition to the Motion to Compel Arbitration and To Stay Action brought by

U.S. Home Corporation.

Respectfully submitted,

DATED: June 14, 2002

KASDAN, SIMONDS & EPSTEIN LLP

By: s/Michael D. Turner

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT, DIVISION TWO

MARVIN JR. and LYNN ST. GERMAIN, individuals; CHARLES and MONICA STANSELL, individuals; SALVATORE and TULA COCO, individuals; MARIAN and MARIA OLESKY, individuals; WAYNE and DIANNA MARTIN, individuals; SAUNDRA DENDY, an individual; LAWRENCE and DENA BROWN, individuals, ANTHONY and VICKI BONOFIGLIO, individuals; KEITH and PENNY DAVIS, individuals; JOHN and YOLANDA FULLINWIDER, individuals; KEVIN TIERNEY and CAMILLE REINEKE, individuals; ALBERTO and VICTORIA GARCIA, individuals; GARY and CYNDA JERGER, individuals; ASSADOR and VALENTINE	) CIVIL NO. _____)) (Riverside) County) Superior Court) Lead Case No.) RIC 362559) consolidated) with) Case Nos. RIC) 368844))) Assigned to) Hon. Dallas S.) Holmes) Riverside) Superior Court) Department 2

FARAJIAN, individuals; SUZY FARAJIAN, an individual; ASSADOR FARAJIAN, as Guardian ad litem for ARPY FARAJIAN, a minor; ROBERT VERGURA, an individual; AMY WORKMAN, an individual; MICHAEL BROWN, an individual; DENA BROWN, as guardian ad litem for DAVID BROWN, a minor; MONICA STANSELL, as guardian ad litem for MONIQUE STANSELL, a minor; MONICA STANSELL, as guardian ad litem for CHANEL STANSELL, a minor; VICTORIA GARCIA, Guardian ad litem for CHRISTIAN GARCIA, a minor; NOURIT VERGURA, an individual; ROBERT VERGURA, as guardian ad litem for NOAH VERGURA, a minor; ROBERT VERGURA, as guardian ad litem for CHANELLE VERGURA, a minor; PATRICIA

McLAUGHLIN, an individual,

Plaintiffs and Petitioners,

vs.

THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE,

Respondent;

U.S. HOME CORPORATION, a Delaware corporation; LENNAR CORPORATION, a Delaware corporation,

Real Parties in Interest.

CONSOLIDATED WITH:

JON HINDS, an individual; NICOLE HINDS, an individual; JON HINDS, guardian ad litem for JASMINE HINDS, a minor; JON HINDS, guardian ad litem for SIMONE HINDS, a minor; JON

HINDS, guardian ad litem for DOMINIQUE HINDS, a minor; DEBORAH LESZKIEWICZ, an individual; ROBERT LESZKIEWICZ, an individual; DEBORAH LESZKIEWICZ, guardian ad litem for JON PHILLIP COMOUCHE, a minor; DEBORAH LESKIEWICZ, guardian ad litem for PAOLENA CAMOUCHE, a minor; RICHARD HENDERSON, an individual; and NANCY HENDERSON, an individual,

Plaintiffs,

vs.

U.S. HOME CORPORATION, a Delaware corporation; LENNAR CORPORATION, a Delaware corporation; and DOES 1-500, inclusive,

Defendants.

IMMEDIATE RELIEF REQUESTED

PETITION FOR WRIT OF MANDATE, PROHIBITION, OR OTHER APPROPRIATE RELIEF AND REQUEST FOR STAY OF PETITIONER DEPOSITIONS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; AND VERIFICATION

(APPENDIX OF RECORD FILED SEPARATELY)

On Appeal from the Judgment of the Superior Court

of the State of California for the County of Riverside

The Honorable Dallas S. Holmes

KASDAN, SIMONDS & EPSTEIN
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Attorneys for Plaintiffs and Petitioners

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

MARVIN JR. and LYNN ST. GERMAIN, individuals; CHARLES and MONICA STANSELL, individuals; SALVATORE and TULA COCO, individuals; MARIAN and MARIA OLESKY, individuals; WAYNE and DIANNA MARTIN, individuals; SAUNDRA DENDY, an individual; LAWRENCE and DENA BROWN, individuals, ANTHONY and VICKI BONOFIGLIO, individuals; KEITH and PENNY DAVIS, individuals; JOHN and YOLANDA FULLINWIDER, individuals; KEVIN TIERNEY and CAMILLE REINEKE, individuals; ALBERTO and VICTORIA GARCIA, individuals; GARY and CYNDA JERGER, individuals; ASSADOR and VALENTINE FARAJIAN,	)	CIVIL NO. _____ (Riverside County Superior Court Lead Case No. RIC 362559 consolidated with Case No. RIC 368844) On Appeal From: Riverside Superior Court Department 2 Assigned to Hon. Dallas S. Holmes RELATED PETITION FOR REVIEW PENDING: *Basura v. U.S. Home* Supreme Court Case No. S108217

individuals; SUZY FARAJIAN, an individual; ASSADOR FARAJIAN, as Guardian ad litem for ARPY FARAJIAN, a minor; ROBERT VERGURA, an individual; AMY WORKMAN, an individual; MICHAEL BROWN, an individual; DENA BROWN, as guardian ad litem for DAVID BROWN, a minor; MONICA STANSELL, as guardian ad litem for MONIQUE STANSELL, a minor; MONICA STANSELL, as guardian ad litem for CHANEL STANSELL, a minor; VICTORIA GARCIA, Guardian ad litem for CHRISTIAN GARCIA, a minor; NOURIT VERGURA, an individual; ROBERT VERGURA, as guardian ad litem for NOAH VERGURA, a minor; ROBERT VERGURA, as guardian ad litem for CHANELLE VERGURA, a minor; PATRICIA McLAUGHLIN, an

individual,)

Plaintiffs and Petitioners,
vs.

U.S. HOME CORPORATION, a Delaware corporation; LENNAR CORPORATION, a Delaware corporation,

Defendants and Respondents

CONSOLIDATED WITH:

JON HINDS, an individual; NICOLE HINDS, an individual; JON HINDS, guardian ad litem for JASMINE HINDS, a minor; JON HINDS, guardian ad litem for SIMONE HINDS, a minor; JON HINDS, guardian ad litem for DOMINIQUE HINDS, a minor; DEBORAH LESZKIEWICZ, an individual; ROBERT LESZKIEWICZ, an individual; DEBORAH LESZKIEWICZ, guardian ad litem for JON PHILLIP

COMOUCHE, a minor; DEBORAH LESKIEWICZ, guardian ad litem for PAOLENA CAMOUCHE, a minor; RICHARD HENDERSON, an individual; and NANCY HENDERSON, an individual,

Plaintiffs,

vs.

U.S. HOME CORPORATION, a Delaware corporation; LENNAR CORPORATION, a Delaware corporation; and DOES 1-500, inclusive,

Defendants.

PETITION FOR SUPREME COURT REVIEW

On Appeal from the Judgment of the Superior Court
of the State of California for the County of Riverside

The Honorable Dallas S. Holmes

RELATED APPEAL PENDING:
Basura v. U.S. Home
Supreme Court Case No. S108217

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RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

Article 1, § 8, cl. 3 of the Constitution provides that "Congress shall have Power to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." Other relevant provisions of Federal and California law are set forth in the Appendix at Exhibit F.

9 U.S.C.§ 2 provides: A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable save as upon such grounds as exist at law or in equity for the revocation of any contract.

9 U.S.C.§ 3 provides: **Stay of proceedings where issue therein referable to arbitration.**

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such

arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

9 U.S.C.§ 4 provides: **Failure to arbitrate under agreement; petition to United States court having jurisdiction for order to compel arbitration; notice and service thereof; hearing and determination**

A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, safe for such agreement, would have jurisdiction under Title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made in the manner provided by the Federal Rules of Civil Procedure. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. The hearing and proceedings, under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed. If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial

thereof. If no jury trial be demanded by the party alleged to be in default, or if the matter in dispute is within admiralty jurisdiction, the court shall hear and determine such issue. Where such an issue is raised, the party alleged to be in default may, except in cases of admiralty, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue or issues to a jury in the manner provided by the Federal Rules of Civil Procedure, or may specially call a jury for that purpose. If the jury find that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury find that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

28 U.S.C. 844(i) provides: Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce shall be imprisoned for not less than 5 years and not more than 20 years, fined under this title, or both; and if personal injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be imprisoned for not less than 7 years and not more than 40 years, fined under this title, or both; and if death

results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall also be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment.

California *Business and Professions Code* sect0ion 5510 provides: **Existence of board of architectural examiners**

There is in the Department of Consumer Affairs a California State Board of Architectural Examiners which consists of 10 members.

California *Business and Professions Code* section 5536 provides: **Practice without license or holding self out as architect; misdemeanor; registered building designer**

(a) It is a misdemeanor, punishable by a fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment, for any person who is not licensed to practice architecture under this chapter, to practice architecture in this state or to use any term confusingly similar to the word architect, or to advertise or put out any sign or card or other device which might indicate to the public that he or she is an architect or that he or she is qualified to engage in the practice of architecture or is an architectural engineer.

(b) It is a misdemeanor, punishable as specified in subdivision (a), for any person to advertise or represent that he or she is a

"registered building designer" or is registered or otherwise licensed by the state as a building designer.

California *Business and Professions Code* section 6710 provides: **Existence of board of registration for professional engineers and land surveyors**

(a) There is in the Department of Consumer Affairs a Board for Professional Engineers and Land Surveyors, which consists of 13 members.

(b) Any reference in any law or regulation to the Board of Registration for Professional Engineers and Land Surveyors is deemed to refer to the Board for Professional Engineers and Land Surveyors.

California *Business and Professions Code* section 7000.5 provides: **Contractors' state license board; existence; membership**

There is in the Department of Consumer Affairs a Contractors' State License Board, which consists of 13 members.

California *Business and Professions Code* section 7028 provides: **Contracting without license; second and subsequent offenses; limitation of actions**

(a) It is a misdemeanor for any person to engage in the business or act in the capacity of a contractor within this state without having a license therefor, unless such person is particularly exempted from the provisions of this chapter.

(b) If such person has been previously convicted of the offense described in this section, the court shall impose a fine of 20 percent of the price of the contract under which the unlicensed person performed contracting work, or four thousand five hundred dollars ($4,500), whichever is greater, or imprisonment in the county jail for not less than 10 days nor more than six months, or both.

(c) In the event the person performing the contracting work has agreed to furnish materials and labor on an hourly basis, "the price of the contract" for the purposes of this section means the aggregate sum of the cost of materials and labor furnished and the cost of completing the work to be performed.

(d) Notwithstanding any other provision of law to the contrary, an indictment for any violation of this section by the unlicensed contractor shall be found or an information or complaint filed within four years from the date of the contract proposal, contract, completion, or abandonment of the work, whichever occurs last.

California *Code of Civil Procedure* section 1298.7 provides: In the event an arbitration provision is included in a contract or agreement covered by this title, it shall not preclude or limit any right of action for bodily injury or wrongful death, or any right of action to which Section 337.1 or 337.15 is applicable.

California *Code of Civil Procedure* section 337.1 provides in pertinent part:

Four years; actions for damages from persons performing or furnishing design, specifications, surveying, planning, supervision or observation of construction or construction of improvement to realty

(a) Except as otherwise provided in this section, no action shall be brought to recover damages from any person performing or furnishing the design, specifications, surveying, planning, supervision or observation of construction or construction of an improvement to real property more than four years after the substantial completion of such improvement for any of the following:

(1) Any patent deficiency in the design, specifications, surveying, planning, supervision or observation of construction or construction of an improvement to, or survey of, real property.

California *Code of Civil Procedure* section 337.15 provides in pertinent part:

Ten years; developer, contractor, architect, etc. of real property; latent deficiency in design, supervision, etc.; injury to property

(a) No action may be brought to recover damages from any person, or the surety of a person, who develops real property or performs or furnishes the design, specifications, surveying, planning, supervision, testing, or observation of construction or construction of an improvement to real property more than 10 years after the substantial completion of the development or improvement for any of the following:

(1) Any latent deficiency in the design, specification, surveying, planning, supervision, or observation of construction or construction of an improvement to, or survey of, real property.

California *Code of Civil Procedure* section 1281.2 provides: **Order to arbitrate controversy; petition; determination of court**

On petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party thereto refuses to arbitrate such controversy, the court shall order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists, unless it determines that:

(a) The right to compel arbitration has been waived by the petitioner; or

(b) Grounds exist for the revocation of the agreement.

(c) A party to the arbitration agreement is also a party to a pending court action or special proceeding with a third party, arising out of the same transaction or series of related transactions and there is a possibility of conflicting rulings on a common issue of law or fact. For purposes of this section, a pending court action or special proceeding includes an action or proceeding initiated by the party refusing to arbitrate after the petition to compel arbitration has been filed, but on or before the date of the hearing on the petition. This subdivision shall not be applicable to an

agreement to arbitrate disputes as to the professional negligence of a health care provider made pursuant to Section 1295.

If the court determines that a written agreement to arbitrate a controversy exists, an order to arbitrate such controversy may not be refused on the ground that the petitioner's contentions lack substantive merit.

If the court determines that there are other issues between the petitioner and the respondent which are not subject to arbitration and which are the subject of a pending action or special proceeding between the petitioner and the respondent and that a determination of such issues may make the arbitration unnecessary, the court may delay its order to arbitrate until the determination of such other issues or until such earlier time as the court specifies.

If the court determines that a party to the arbitration is also a party to litigation in a pending court action or special proceeding with a third party as set forth under subdivision (c) herein, the court (1) may refuse to enforce the arbitration agreement and may order intervention or joinder of all parties in a single action or special proceeding; (2) may order intervention or joinder as to all or only certain issues; (3) may order arbitration among the parties who have agreed to arbitration and stay the pending court action or special proceeding pending the outcome of the arbitration proceeding; or (4) may stay arbitration pending the outcome of the court action or special proceeding.

California *Health and Safety Code* section 17921(a) provides: **Building standards; rules and regulations**

Except as provided in subdivision (b), the department shall propose the adoption, amendment, or repeal of building standards to the California Building Standards Commission pursuant to the provisions of Chapter 4 (commencing with Section 18935) of Part 2.5, and the department shall adopt, amend, and repeal other rules and regulations for the protection of the public health, safety, and general welfare of the occupant and the public governing the erection, construction, enlargement, conversion, alternation, repair, moving, removal, demolition, occupancy, use, height, court, area, sanitation, ventilation and maintenance of all hotels, motels, lodging houses, apartment houses, and dwellings, and buildings and structures accessory thereto. Except as otherwise provided in this part, the department shall enforce those building standards and those other rules and regulations. The other rules and regulations adopted by the department may include a schedule of fees to pay the cost of enforcement by the department under Sections 17952 and 19765.

California *Health and Safety Code* section 17957 provides: **Alternate procedure.**

The governing body of any city, county, or city and county may enact an ordinance prescribing an alternate procedure which is equal to or more restrictive than the procedure specified in Sections 17953, 17954, and 17955.

California *Health and Safety Code* section 17995 provides: **Misdemeanor; punishment.**

Any person who violates any of the provisions of this part, the building standards published in the State Building Standards Code relating to the provisions of this part, or any other rule or regulation promulgated pursuant to the provisions of this part is guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars ($1,000) or by imprisonment not exceeding six months, or by both such fine and imprisonment.

California *Health and Safety Code* section 17995.1 provides: **Second or subsequent violations; penalties**

Any person who is convicted pursuant to Section 17995 for a second or subsequent time within a five-year period for violations at the same property shall be punishable by a fine not to exceed five thousand dollars ($5,000) or by imprisonment not exceeding six months, or both such fine and imprisonment.

California *Health and Safety Code* section 19825 provides: **Declarations; form; contractor list.**

(a) Every city or county that requires the issuance of a permit as a condition precedent to the construction, alteration, improvement, demolition, or repair of any building or structure shall, in addition to any other requirements, require the following declarations in substantially the following form upon the issuance of any building permit:

BUILDING PROJECT IDENTIFICATION

Applicant's Mailing Address ----------
Address of Building ----------
Owner's Name if Known ----------
Telephone No. ----------
Contractor's Name ----------
Contractor's Mailing Address ----------
Lic. No. ----------
Architect or Engineer ----------
Architect's or Engineer's Address ----------
Lic. No. ----------
In addition the city or county may require that there be included, in the building project identification portion of a building permit, the following:
Assessor's Parcel Number* ----------
Permit Date ----------
Permit Number ----------
Description of Work ----------
Building Permit Valuation ----------

*To be entered by issuing agency.

LICENSED CONTRACTOR'S DECLARATION

I hereby affirm under penalty of perjury that I am licensed under provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and my license is in full force and effect.
License Class ---------- Lic. No. ----------
Date ---------- --------- Contractor ----------

OWNER-BUILDER DECLARATION

I hereby affirm under penalty of perjury that I am exempt from the Contractors' State License

Law for the following reason (Sec. 7031.5, Business and Professions Code: Any city or county that requires a permit to construct, alter, improve, demolish, or repair any structure, prior to its issuance, also requires the applicant for the permit to file a signed statement that he or she is licensed pursuant to the provisions of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code) or that he or she is exempt therefrom and the basis for the alleged exemption. Any violation of Section 7031.5 by any applicant for a permit subjects the applicant to a civil penalty of not more than five hundred dollars ($ 500).):

– I, as owner of the property, or my employees with wages as their sole compensation, will do the work, and the structure is not intended or offered for sale (Sec. 7044, Business and Professions Code: The Contractors' State License Law does not apply to an owner of property who builds or improves thereon, and who does the work himself or herself or through his or her own employees, provided that the improvements are not intended or offered for sale. If, however, the building or improvement is sold within one year of completion, the owner-builder will have the burden of proving that he or she did not build or improve for the purpose of sale.).

-- I, as owner of the property, am exclusively contracting with licensed contractors to construct the project (Sec. 7044, Business and Professions Code: The Contractors' State License Law does not apply to an owner of property who builds or improves thereon, and

who contracts for the projects with a contractor(s) licensed pursuant to the Contractors' State License Law.).
-- I am exempt under Sec. --------, B.& P.C. for this reason ----------

Date ---------- Owner ----------

WORKERS' COMPENSATION DECLARATION

I hereby affirm under penalty of perjury one of the following declarations:

------ I have and will maintain a certificate of consent to self-insure for workers' compensation, as provided for by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued.

------ I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued. My workers' compensation insurance carrier and policy number are:
Carrier ----------
Policy Number ----------

(This section need not be completed if the permit is for one hundred dollars ($100) or less).

------ I certify that, in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and agree that, if I should become subject to the workers' compensation

provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.

Date: ---------- Applicant: ----------

WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS ($ 100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.

CONSTRUCTION LENDING AGENCY

I hereby affirm under penalty of perjury that there is a construction lending agency for the performance of the work for which this permit is issued (Sec. 3097, Civ. C.).
Lender's Name ----------
Lender's Address ----------

I certify that I have read this application and state that the above information is correct. I agree to comply with all city and county ordinances and state laws relating to building construction, and hereby authorize representatives of this county to enter upon the above-mentioned property for inspection purposes.

Signature of Applicant or Agent Date

(b) The Contractors' State License Board shall provide semiannually, upon the request of city, county, and city and county building

departments, a list of all contractors that did not secure payment of compensation in accordance with Article 1 (commencing with Section 3700) of Chapter 4 of Part 1 of Division 4 of the Labor Code during any period for which workers were employed during the preceding six months.

California *Business and Professions Code* section 19826 provides: **Properly executed declarations; necessary contents of permit, accuracy; certificate copies; disposition**

(a) No city or county, whether general law or chartered, shall issue a building permit which does not contain all applicable declarations required by Section 19825 properly executed by the owner, applicant, contractor, or agent of the owner, contractor, or applicant. The properly executed declarations shall be a condition for issuance of the building permit. A properly executed declaration may include a declaration signed and transmitted by facsimile or other electronic means., However, no city or county or its employees shall be responsible for determining the truth or accuracy of the declarations, and no monetary liability on the part of, and no cause of action for damages against them, shall arise from their failure to verify the truth or accuracy of the declarations.

(b) A city or county may require that within 15 days of issuance, the issuing agency of the city or county deliver copies of all building permits to the assessor of the county.

(c) For purposes of this section, an "application for a building permit" shall be construed as a "transaction: and all declarations

required shall be construed as "records" under Title 2.5 (commencing with Section 1633.1) of Part 2 of Division 3 of the *Civil Code*.

California *Health and Safety Code* section 19835 provides: **Security for building permit; forms satisfying local requirements**

Whenever a local ordinance authorizes or requires the furnishing of security in connection with the performance of any act or agreement required as a condition for the issuance of a building permit, the building permit applicant may provide any of the following as such security:

(a) A deposit, either with the local agency or a responsible escrow agent or trust company, at the option of the local agency, of money or negotiable bonds of the kind approved for securing deposits of public moneys.

(b) An instrument of credit from one or more financial institutions subject to regulation by the state or federal government and pledging that the funds necessary to carry out the act or agreement are on deposit and guaranteed for payment or a letter of credit issued by such a financial institution.

(c) Bond or bonds by one or more duly authorized corporate sureties.

(d) Any form of security which is acceptable to the local agency and specified by ordinance thereof.